

**BOARD FOR GEOLOGISTS AND GEOPHYSICISTS**

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**MINUTES OF THE MEETING OF THE
BOARD FOR GEOLOGISTS AND GEOPHYSICISTS****May 20, 2005**2535 Capitol Oaks Drive
Sacramento, CA 95833-2926**1. CALL MEETING TO ORDER**

Craig Copelan, President, called the meeting to order at 9:30 a.m.

2. ROLL CALL TO ESTABLISH QUORUM

Craig Copelan, President

Robert A. Matthews, Ph.D., Vice President

William E. Black

Jeffrey Schmidt

Others in attendance:

Paul Sweeney, Executive Officer

George Dunfield, Enforcement Manager

Gary Duke, Legal Counsel, Department of Consumer Affairs (DCA)

Nancy Linn, Department of Consumer Affairs Office of Examination Resources (OER)

Tony Sawyer, Chair, Technical Advisory Committee (TAC)

Kris Vyverberg, Department of Fish and Game

Eileen Webb, Vice Chair, Oregon Board of Geologic Licensure

Dr. Ned Andrews, United States Geological Survey

William L. Neal, Geochem Applications

Laurie Neal

Rick Rempel, Rempel Consulting Inc.

Seena Hoose

3. PUBLIC COMMENT ON NON-AGENDA ITEMS

There were no comments from the public on non-Agenda items.

**4. APPROVAL OF THE MINUTES OF THE FEBRUARY 11 AND APRIL 29, 2005
BOARD MEETINGS (COPELAN) (ACTION)**

Dr. Matthews moved to approve the minutes from both the February 11 and April 29, 2005 Board meetings. Mr. Jeffrey Schmidt seconded the motion. The motion passed unanimously.

*The Mission of the Board for Geologists and Geophysicists is to Continuously Enhance the
Quality, Significance, and Availability of Geological and Geophysical Services Offered to the People of California*

5. PUBLIC HEARING TO AMEND SECTION 3005, TITLE 16, DIVISION 29 OF THE CALIFORNIA CODE OF REGULATIONS CONCERNING ASBOG FUNDAMENTALS OF GEOLOGY EXAMINATION FEES.

The Board Meeting was adjourned. The Public Hearing was opened at 10:06 am. After stating the purpose of the meeting, the Executive Officer asked for any comments on the proposed regulations. There were none. He also indicated that no comments had been received by the Board on the proposed regulations.

Board Member Black moved to adopt the proposed regulations. Board Member Schmidt seconded the motion. The proposed regulations were adopted unanimously by the Board.

The Public Hearing was closed.

6. RECONVENE PUBLIC MEETING.

The Board Meeting was reconvened at 10:08 am.

7. STATUS REPORT ON THE REGISTERED GEOPHYSICISTS OCCUPATIONAL ANALYSIS.

Nancy Linn of the Department of Consumer Affairs Office of Examination Resources (OER) gave an update on the Occupational Analysis. She stated the project is on schedule, and that the report should be completed by June 30, 2005.

Mr. Sweeney asked Ms. Linn if she could present the final report to the Board at their next meeting, which is scheduled for July 15, 2005. Ms. Linn indicated that she would present the final occupational analysis report to the Board at that time.

8. CONSIDERATION OF APPLICATION FOR REGISTRATION AS A PROFESSIONAL GEOLOGIST OR CERTIFIED HYDROGEOLOGIST UNDER SECTION 7847 OF DAVID SCHWARTZBART, WILLIAM L. NEAL, EDMUND D. ANDREWS AND SAM ARBUTHNOT (COPELAN) (POSSIBLE ACTION)

The Board granted Mr. William L. Neal a Professional Geologist license through their authority in section 7847 of the Geologists and Geophysicists Act.

The Board rejected Dr. Edmund D. Andrews, Mr. Schwartzbart and Mr. Arbuthnot's applications for licensure.

9. EXAMINATION COMMITTEE REPORT

Mr. Sweeney gave a status report on the licensing examinations that were administered in Sacramento and Carson, California on March 4, 2005. The examination results should be mailed out next week (they were actually mailed out on Thursday, May 26, 2005 editor's note).

Several resumes were reviewed for possible selection to the Examination Committee,

but further time for review was requested by Dr. Matthews and agreed to by the Board. The Board will make Committee selections at its next Board Meeting.

Mr. Sweeney and the Board briefly discussed some materials from the National Association of State Boards of Geology (ASBOG) that were included in the Board packet. The materials included correspondence between ASBOG and the AAPG regarding the potential use of the ASBOG licensing examination by AAPG.

The discussion then moved to the next Agenda item.

10. CONSIDERATION OF EXAMINATION COMMITTEE RECOMMENDATION ON THE CALIFORNIA-SPECIFIC PORTION OF THE CALIFORNIA PROFESSIONAL GEOLOGIST LICENSING EXAMINATION.

Mr. Sweeney handed out additional materials that arrived in the Board's offices after the Board packets were mailed out. Mr. Sweeney also referred to the January 25 Executive Committee meeting in which Board Member Bill Black requested that this item be readdressed. Mr. Sweeney distributed a copy of the Board's February 11, 2005 Agenda which addressed this issue as Agenda Item Number Seven. He reiterated (and as the approved Board minutes from the February 11, 2005 Board Meeting show) that the Board directed the Examination Committee to address this issue. Because of the interest in this issue, all four Board Members and three Members of the Examination Committee (Dr. Tom Kelty and Tom Spittler in attendance and Laura Cathcart-Dodge by teleconferencing) met on April 29, 2005 in Sacramento in order to make a recommendation to the Board at today's meeting.

The recommendation of the Board/Examination Committee was to pursue the recommendation made by the Chief of the Office of Examination Resources, Dr. Tracy Montez, as described in her memo to the Executive Officer dated April 28, 2005. Dr. Montez' recommendation was to create a focus group of approximately nine licensed Professional Geologists in California who would work with a psychometrician from OER in evaluating the California-specific examination (CSE).

Eileen Webb spoke to the Board about her reason for traveling to Sacramento from Oregon to describe the logic behind the Oregon Board's recent decision (March 2005) to eliminate their state-specific examination, leaving California as the only state with a state-specific examination for geologic licensure. She and her fellow Board Members felt strongly that they would lose any legal challenge made to the Board on the issue of the validity and relevance of an Oregon-specific examination. The Board evaluated the issue of eliminating their state-specific examination very thoroughly and came to the conclusion that the national (ASBOG) licensing examination for geologists, coupled with a Code of Ethics/Professional Conduct in regulation, was sufficient to fulfill the Oregon Board's Mission of protecting public health and safety.

Ms. Webb mentioned that she is in the fourth year of a six-year term on the Oregon Board and that she has heard nothing but whining and complaining by all people involved, even remotely, with the Oregon-specific examination. Not only has she heard how participants are confused and allegedly treated unfairly from 'grandfathers' but also in her meetings with the ASBOG Council of Examiners and in her dealings with other Boards in other States she encounters some of the same concerns and

questions about the legality and necessity of their state-specific examination. The Oregon Board decided to concentrate on the ability to practice geology, not on the uniqueness of geology. Does the Oregon Board believe that having the Oregon-specific exam better protects the public? No.

In summary, Ms. Webb detailed how Oregon has a significant number of multi-state licensees who were getting 'hung up' by the Oregon state-specific examination requirement.

Rick Rempel stated for the record that he was very much in support of the recommendation to eliminate the CSE. He mentioned that taking the old exam, like he did, could be likened to a 'crap shoot.' He concurred with the comments made by Eileen Webb. He didn't see any enforcement actions as posted on the Board's website that could have been either prevented or mitigated by a CSE. He felt that the Board should continue to focus on enforcing the Code of Professional Standards. He reiterated his support for the complete elimination of the CSE.

Seena Hoose, representing herself only, submitted her written comments on this issue. She felt that the California regulations were what made the CSE important, not the geology. Mr. Sweeney asked her why the statute and regulations, which are always changing, could not be 'googled' by a licensee or an applicant for licensure. She stated that she didn't understand what that meant.

Ms. Hoose wanted to know how important, during landslide investigations, it was to know that some jurisdictions within California required three foot boreholes into which individuals were lowered into. Would out-of-state applicants know about that standard of care? Mr. Dunfield responded that this was no longer a standard of care in the investigation of landslides and, in fact, was only practiced by one particular firm more than twenty years ago.

Gary Duke questioned Ms. Hoose on what she specifically felt needs to be addressed on this issue of the CSE and what was, in her opinion, relevant to the discussion. Ms. Hoose recalled some obscure cases involving the practice of geology that happened many years ago, to the best of her recollection in which she felt that knowledge of the specific regulations would have better protected the public.

Mr. Duke countered with the fact that licensing exams are to test minimum competency. But for clarification, he asked Ms. Hoose if the Board should test on professional standards and California law. Ms. Hoose responded that she felt that the Board should concentrate on the laws and regulations applicable for practicing in California.

Mr. Duke responded that from a legal perspective, what she was suggesting implies a different type of test, an educational test. He gave an example about the current security guards test (powers to arrest exam, open-book, but they have to pass it [100%] before they can practice). This is an effort to educate security guards on the limits of their authority.

Nancy Linn, representing the DCA OER, provided an explanation on the differences between an educational test and a licensure examination. There are very significant

differences between the two types in their efforts to protect the public. These two types of tests cannot be combined. It has to be either an educational test or a licensure test.

Ms. Linn stressed the importance of acknowledging that the examination for geologic licensure is not for education, but is to test for minimum competency. As an example, in a multiple choice format, the candidate makes a choice, and they never will know if they are right or wrong, based, in part, in keeping the examination secure. Therefore, any licensure examination cannot be educational, but must test, and test rigorously, for minimum competency. Testing for the knowledge of a specific, perhaps even considered trivial regulatory standard is not appropriate for testing minimum competency.

Tony Sawyer described the process by which an individual could earn a private pilots' license.

Ms. Webb made a final comment before leaving the meeting that a Code of Ethics, properly enforced like California does, covers all of Ms. Hoose's concerns.

William Neal, as a small business person, believes that the CSE must be eliminated. It is anti-business and sends a very bad signal to all of the other states in America. He is a strong proponent of national licensure. Why get snagged by a minutiae regulation in any given state to a competent practicing geologist.

George Dunfield, Enforcement Manager of the Board, mentioned about how a failure of the professional standards on technical merits is the cause of most enforcement actions, and that, in his belief, the administration of the CSE has had no impact on mitigating enforcement actions, and probably never will.

Board Member Bill Black made a motion, seconded by Dr. Matthews, to adopt Dr. Montez' recommendation for a focus group, facilitated by an OER-approved test development expert, to evaluate the current scope of Professional Geologist practice in relation to the 2000 Occupational Analysis, entry-level standards for competent and safe practice, and consumer protection. The motion passed unanimously.

Mr. Sweeney remarked that the focus group could be held on October 6-7, 2005 per Dr. Montez' request. Board President Copelan directed staff to send out a request for volunteers for the October 6-7, 2005 focus group and to bring the resumes/CVs from interested PGs to the Board for selection into the focus group at the Board's July 15, 2005 meeting.

11. REPORT ON PROPOSED REGULATIONS (Note: This item was taken out of order and acted upon after Agenda Item Number 4 and before Agenda Item Number 5.)

The Board discussed the letter from Pam Wortman, Budget Officer for the Department of Consumer Affairs dated February 18, 2005, that forced the Board to issue a 15-day notice on the proposed fee increase for a reduced amount. Dr. Matthews moved and Mr. Black seconded the proposed amended renewal fee increases for Professional Geologist and Registered Geophysicist from \$200 every two years to \$270 every two years and for specialty licenses from \$50 every two years to \$67.50 every two years.

The motion passed unanimously.

Mr. Sweeney also indicated that two new regulation packages had been submitted to the Office of Administrative Law, initiating the 45-day comment period that will culminate in a Public Hearing for potential adoption of the regulations at the Board's next meeting on July 15, 2005.

The two proposed regulations are the Complaint Disclosure Policy and the increase in the Cite and Fine penalty amount.

12. LEGISLATIVE COMMITTEE REPORT

Mr. Sweeney discussed the Governor's Reorganization Plan Number 1 that was withdrawn by Governor Schwarzenegger. Mr. Sweeney also informed the Board that GRP 2 (renamed number one after the original GRP 1 was withdrawn) was written into legislation and signed into law by Governor Schwarzenegger (dealing with the reorganization of the California Youth and Adult Correctional Agency).

Senate Bill 228 (Figueroa) has passed the Senate and is currently in the Assembly. If this bill is signed into law as written by Governor Schwarzenegger, the Board for Geologists and Geophysicists will be extended until 2012.

13. TECHNICAL ADVISORY COMMITTEE REPORT

Tony Sawyer, Chair of the TAC, reported that the Committee met in Sacramento on May 6, 2005. He informed the Board that the TAC felt that AB 290 (Leslie) should be watched by the Board. The Board referred the bill to the Legislative Committee.

He also mentioned that he felt that Kris Vyverberg should continue on as a member of the TAC. Dr Matthews moved that Ms. Vyverberg continue in her capacity as a TAC member, and Mr. Black seconded. The motion passed unanimously.

14. EXECUTIVE OFFICER'S REPORT (Sweeney) (Possible action)

Mr. Sweeney distributed the latest Budget information that was prepared by the Department of Finance (CalSTARS). The Board will be close to expending its budget authorization of \$730,000 for FY 04/05. Mr. Sweeney indicated that the Board always receives a 'bump' in revenue in June due to new licensees applying for their first license. The Board's previously approved Budget Change Proposals are still included in the Governor's current budget proposal.

Mr. George Dunfield, Enforcement Manager, presented the Enforcement Report and reported the following enforcement datum:

Case Load Summary

The Board for Geologists and Geophysicists (Board) currently has 64 open enforcement cases: approximately 66% are against unlicensed individuals and 34% are against licensees.

Major Actions Since February 11, 2005 Board Meeting

1. Enforcement Program Details:

- 5 New cases opened;
- 2 Warning/Compliance notices issued;
- 3 Cases sent to technical experts;
- 1 Case referred to Division of Investigation;
- 4 Citations and Fines issued; and
- 5 Cases closed.

2. Board Informational Items/Trends in Enforcement Datum:

- The Board issued a \$2,500 Citation and Fine to David Irwin (PG No. 5708 and CEG No. 1988) for misrepresenting his professional affiliations. Irwin signed the name of a member of the public and forwarded it to a California state reimbursement agency which subsequently requested an investigation by the State Controller's Office.

The Special Investigations Bureau of the State Controller's Office investigated the case and concluded that there was no fraud in this case. The reimbursement agency then referred the matter to the Board for review with respect to the Business and Professions Code requirements of a Professional Geologist and to take appropriate action. Mr. Irwin's actions fell below the standard of practice of a PG or CEG, which requires a PG or CEG to obtain written authority (e.g., a Power of Attorney or other appropriate authorization) and explicitly disclose such authority when signing the name of another person to any document. The case was closed on March 3, 2005.

- The Board revoked PG license No. 4315 issued to Mr. Gary Johnson. The PG license was revoked as part of the resolution of Accusation Number No. 01-2002-14 for unprofessional conduct. PG Gary Johnson failed to exercise reasonable care in determining and reporting the exact locations of the former subsurface structures and geologic conditions located at a contamination release site in central California. The professionally certified reports were subsequently submitted for state reimbursement. The exact locations of former subsurface facilities on the site were critical not only to pinpoint investigation and remediation activities but also to determine whether or not the project was reimbursable by the State. Mr. Johnson agreed that cause for discipline existed and consequently surrendered his revoked Professional Geologist license No. 4315 to the Board. The case was closed on February 24, 2005 by adoption of the Stipulated Revocation of License and Order.
- Constructed a strong professional working relationship with the State Water Resources Control Board, Division of Financial Assistance (DFA) - see Citation and Fine against Mr. David Irwin above and referred to the Board by the Chief of the DFA. Furthered our interagency relationship by working directly with Ron Duff, PE, Manager of the USTCUF, page 8. One area of mutual benefit that was identified by Mr. Duff and I was the placement of the

Board's Enforcement Actions relative to environmental work on the front page of the USTCUF reimbursement internet homepage.

- Served as an expert witness/Board representative with Deputy Attorney General Marc Greenbaum during the Board's trial against Mr. Richard Pfof, PG No. 4104 and CEG No. 1291 and Mr. John Kammer, PG No. 6295, CHG No. 502 and CEG No. 2118. The trial lasted three of the five days scheduled for the Action with the Office of Administrative Hearings. The Board imposed discipline on Mr. Kammer's and Mr. Pfof's licenses as part of the two Stipulated Settlement and Disciplinary Orders (Orders) in resolution of the two Accusation charging the geologists with acts of misrepresentation, negligence and unprofessional conduct and therefore, subjecting their licenses to discipline. Mr. Kammer and Mr. Pfof failed to provide fundamental geologic data, proper site-specific geologic mapping and sufficient documentation to establish an appropriate setback for the geologic conditions for a proposed single-family residence site in Santa Barbara, California. Both geologists failed to provide geologic documentation regarding the nature of possible movement within the bedrock, impacts on slope Factor of Safety (FS). Both Geologists further agreed to have their licenses placed on probation for a three-year period, and to pay \$7,500.00. They also agreed to additional conditions specified in the Orders. It is understood by Mr. Kammer and Mr. Pfof that if they violate any aspect of probation, the Board will move to revoke their licenses. These cases were closed on May 25, 2005 by Board adoption of the Orders.
- Continued to work with Ventura and Humboldt Counties in facilitating compliance with the Geologists and Geophysicists Act and Regulations and to better understand the enforcement concerns within the jurisdictions of the Counties.
- Mr. Dunfield presented a report to the Board that was similar to the report he gave to the Department of Consumer Affairs Director Charlene Zettel.

Area of Practice Category Summary of Open Enforcement Cases

The 64 active enforcement cases can be broken down into the following six categories:

<u>Category</u>	<u>Number of Cases</u>	<u>Approximate Percentage</u>
<i>Environmental Geology</i>		
Soil contamination	10	15%
Ground water contamination	28	44%
Environmental Geology (other)	2	4%
Subtotal, Environmental Geology Category	<u>40</u>	<u>63%</u>
<i>Engineering Geology</i>		
Slope stability	11	17%
Faulting	1	1%

Engineering Geology (other)	1	1%
Subtotal, Engineering Geology Category	<u>13</u>	<u>19%</u>
Economic Geology	4	6%
Ground water - supply/evaluation	4	6%
Geophysics	1	2%
Miscellaneous	2	4%
Subtotal, General Geology Categories	<u>11</u>	<u>18%</u>
Total	64	100%

Mr. Sweeney discussed the informational items remaining in the Board's packet, including a report on his presentation to Sonoma State University's Geology Department, a copy of the Department of Consumer Affairs 2005 Strategic Plan and correspondence from different individuals interested in the activities of the Board.

15. LEGAL REPORT (Duke) (Possible action)

Mr. Sweeney distributed an October 2004 letter written by Mr. Duke that discusses slope stability and factors of safety. There was nothing else to report.

16. & 17. REPORT ON RESULTS OF CLOSED SESSION (Copelan) (Possible action)

The closed session was not conducted.

18. ANNOUNCEMENTS (Board President) (Possible action)

Mr. Copelan announced that the next Board meeting will be held on July 15, 2005 at the Board's offices in Sacramento.

19. ADJOURN MEETING

Mr. Copelan adjourned the meeting at approximately 1:00 p.m.

CRAIG A. COPELAN, P.E., BOARD PRESIDENT

PAUL SWEENEY, BOARD EXECUTIVE OFFICER

Date Approved: July 15, 2005